

REMARKS

Applicants have received the Office Action dated March 24, 2005, and the reference cited therewith. Applicants thank the Examiner for the opportunity to discuss this matter in a phone interview.

In this response, claims 1, 18, 29, 30, and 31 are amended, claim 5 is cancelled and new claims 34 and 35 are added. The amendments to the claims are supported in the specification and drawings as originally filed. No new matter has been added.

Claims 1-4, 6, 8-11, 13-20, and 23-35 are now pending in this application.

Allowable Subject Matter

Applicant acknowledges the allowance of claims 10, 11, 13-17 and 28.

Claims 5, 20, 24 and 25 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 30 has been amended to include the limitations of claim 5 and the limitations of claim 1, from which claim 5 depends. New claim 35 includes the limitations of claim 24 and claim 18, from which claim 24 depends.

§102 Rejection of the Claims

Claims 1-4, 6, 8-9, 18, 19, 23, 26 and 27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Moaddeb (U.S. Patent No. 5,324,325). Claims 29-33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Altman et al. (U.S. Patent No. 6,358,247). Applicants respectfully traverse these rejections.

Claim 1

Applicants respectfully submit that Moaddeb does not show each element of claim 1. For example, Applicants cannot find in Moaddeb an “active fixation assembly having an intermediate portion having one or more pockets therein” as required by claim 1. Moaddeb describes that “the extreme distal end of the rigid helix 42, at which the sharpened tip is disposed, has an annular bore 54 therein, which is open at the tip of the rigid helix 42.”

Moaddeb col. 4, lines 40-44. Reconsideration and withdrawal of the rejection of claim 1 is respectfully requested.

Claims 2-4, 6, and 8-9

Dependent claims are allowable if they depend from an allowable independent claim. See MPEP § 2143.03. Applicants respectfully submit that claims 2-6 and 8-9 are allowable at least because they depend from an allowable independent claim. As described above, Applicants cannot find in Moaddeb an “active fixation assembly having an intermediate portion having one or more pockets therein” as required by claim 1, from which claims 2-4, 6 and 8-9 depend.

Reconsideration and withdrawal of the rejection of claims 2-4, 6 and 8-9 is respectfully requested.

Claim 18

Applicants respectfully submit that Moaddeb does not disclose each element of claim 18. For example, Applicants cannot find in Moaddeb “forming at least one recess in the helix by removing material from an intermediate portion of an outer surface of the fixation helix” as required by claim 18. Moaddeb describes that “the extreme distal end of the rigid helix 42, at which the sharpened tip is disposed, has an annular bore 54 therein, which is open at the tip of the rigid helix 42.” Moaddeb col. 4, lines 40-44. Applicants submit that Moaddeb does not disclose removing material from an intermediate portion. Reconsideration and withdrawal of the rejection of claim 18 is respectfully requested.

Claims 19, 23, 26, and 27

Applicants respectfully submit that claims 19, 23, 26 and 27 are allowable at least because they depend from an allowable independent claim. As described above, Applicants cannot find in Moaddeb “forming at least one recess in the helix by removing material from an outer surface of the fixation helix” as required by claim 18, from which claims 19, 23, 26, and 27 depend.

In addition, Applicants cannot find other limitations of claims 19, 23, 26 and 27 in Moaddeb. For example, Applicants are also unable to find in Moaddeb “forming a passage

through the helix” in combination with the other elements required by claim 27. Reconsideration and withdrawal of the rejection of claims 19, 23, 26 and 27 is respectfully requested.

Claim 29

Applicants respectfully submit that Moaddeb does not disclose each element of claim 29. For example, Applicants cannot find in Altman an “at least one of the one or more cavities extends laterally from a first side of the active fixation assembly to a second side of the active fixation assembly, forming a passage therethrough” as required by claim 29. The Office Action stated that “the cavity that forms the passage extends from a distal side to a proximal side of the hypotube 114”. Applicants respectfully traverse. The proximal and distal portions of a fixation helix are not “sides”, but rather are ends. See, e.g., Application paragraph 41, line 4 (“The end of the thin hollow cylinder is closed on one or both ends.”) Moaddeb does not disclose one or more cavities extending laterally from a first side to a second side as required by claim 29. Reconsideration and withdrawal of the rejection of claim 29 is respectfully requested.

Claim 30

Claim 30 incorporates the limitations of claim 5, which the Office Action indicated would be allowable if rewritten in independent form. Claim 30 also includes the limitations of claim 1, from which claim 5 depends. Reconsideration and withdrawal of the rejection of claim 30 is respectfully requested.

Claims 31-33

Applicants respectfully submit that claims 31-33 are allowable at least because they depend from an allowable independent claim. As described above, Applicants submit that claim 30, from which claims 19, 23, 26, and 27 depend, is allowable.

In addition, Applicants cannot find other limitations of claims 31-33 in Altman. For example, Applicants are also unable to find in Altman “the hypotube includes at least one closed end” in combination with the other elements recited by claim 33. Reconsideration and withdrawal of the rejection of claims 31-33 is respectfully requested.

Claim 34

Applicants respectfully submit that claim 34 is allowable at least because it depends from an allowable independent claim. As described above, Applicants submit that claim 29, from which claim 34 depends, is allowable.

Claim 35

New claim 35 recites the limitations of claim 24 and the limitations of claim 18, from which claim 24 depends. The Office Action indicated that claim 24 would be allowable if rewritten in independent form. Allowance of claim 35 is respectfully requested.

Interview Summary

Examiner Scott Getzow and Applicants' representative Jeffrey P. Cook participated in a phone interview on June 20, 2005. Claims 1, 18, 30, and 35 were discussed. No agreement was reached.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6913 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

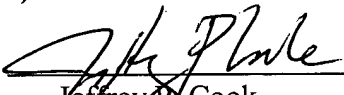
Respectfully submitted,

PAUL KAWULA ET AL.

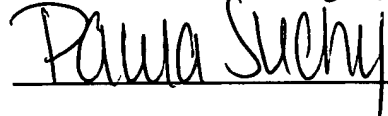
By their Representatives,

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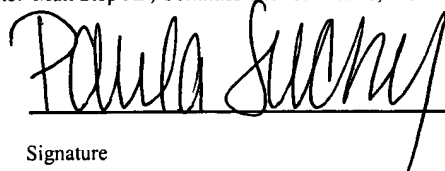
Date June 21, 2005

By 
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Reg. No. 48,649

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 22 day of June, 2005.



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